



ATTORNEY GENERAL Steve Six

KANSAS

Introduction to the Kansas Open Records Act (KORA)

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KORA Enacted in 1984

KORA provides the procedure for the public to view and make copies of governmental records. It also defines and categorizes records.



Purpose and Construction

It is the public policy of Kansas that “public records shall be open for inspection by any person unless otherwise provided, and this act shall be liberally construed and applied to promote such policy.”



Who is Subject to KORA

Public agencies include the state, political or taxing subdivisions or any office or officer, agency or instrumentality, that receives or expends public funds.



Who is subject to KORA

Instrumentality is not defined in KORA.

The two types most likely to be subject to KORA:

1. those created by a covered entity
2. those that have become an extension of a covered entity.



Who is not subject to KORA

1. Private companies, even if they receive public funds in exchange for goods and services.
2. Judges and courts.
3. An individual legislator or member of a governing body.
4. Private individuals.



Applying KORA to a Request

KORA is, in part, a procedural statute and might best be illustrated by reviewing the sequence of actions that should take place once a record request has been made.



Before a Request is Made

The public agency must appoint a freedom of information officer to assist with KORA requests.

The public agency must have available a brochure outlining the KORA process and the requestors rights to records.

The name and title of the records custodian, fees and office hours should be available for anyone making a request.

All requests must be treated the same.



Who May Make a Request

Any person may make a request.

The person need not be a resident.

The person need not provide a reason for their request.



Form of the Request

The public agency:

1. May require it to be in writing (but on no particular form)
2. Require requesters name and address only
3. May require proof of identification
4. May require written certification that the requester will not use names and addresses obtained to solicit sales or services.



Rights of the Requestor

Unless closed by law, the public has the right to review all public records.

Anyone may make an abstract or request copies of a record.

If copies cannot be made where the record is located, arrangements must be made to allow copying.

If portions of a record are closed, the remainder must be made available to the requestor.



Limitations of the Requestor's Rights

A requestor may not remove a public record without the written consent of the custodian.

An agency is not required to make copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations unless shown at a public meeting. Copyrighted materials may not be reproduced without permission from the copyright holder. These items must be available for viewing or listening.



Responding to the Request

The request must be “acted upon” within three business days.

The three acceptable responses:

1. The record is provided.
2. The request is under review and the records, if permitted, will follow.
3. The request is denied with a detailed explanation of why.



Allowable Fees and Charges

Agencies may only recover their costs to provide the requested records.

These costs include staff time to retrieve, review and redact information from a record.

Fees may be estimated and collected in before the records are provided.



Public Records Defined

Public records are defined as “any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency. . . .”

This includes written records and photographs, computer data, and email.



Excluded Records

Private records which are owned by a private person or entity and are not related to functions, activities, programs or operations funded by public funds.

Records that do not exist at the time of the request.

Records that must be created in order to fulfill a request.



Categorizing Records

All public records may be categorized as follows:

1. Records that are open without restriction.
2. Records that may be closed at the discretion of the official record custodian.
3. Records that are closed by statute or other rule.



Records Open Without Restriction

The preliminary assumption is that a record falls within this category.

Prior to releasing a record, it is important to determine if it falls within another category.



Records That Are Discretionarily Closed

There are many types of records that may be closed.
The three policy reasons may be described as:

Personal privacy

Security

Internal communications while policies are developed or
administrative procedures are underway



Closure Based Upon Personal Privacy

A public agency's employee personnel file. Except we may not close:

- Names of employees

- Positions

- Salaries or actual employment contracts including employment related contracts or agreements

- Length of service



Closure Based Upon Personal Privacy

Other information contained in individual personnel files
that is not subject to disclosure

- Performance ratings including any disciplinary actions taken.

- Salary deductions.

- Employee home addresses.

- Employee identification photographs.

- Letters of reference or recommendations.

- Any information associated with ADA or other health/ work related accommodation.



Closure Based Upon Personal Privacy

Medical and treatment records.

Student records.

Records containing personal information that, if released, would “constitute a clearly unwarranted invasion of personal privacy.”

Defined as “revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to person or property and is not of legitimate concern to the public.”



Closure Based Upon Security

Records that would reveal the identity of an undercover agent or informant.

Criminal investigation records-there are several factors to be considered that are designed to weigh public interest in disclosure vs. the harm of disclosure.



Closure Based Upon Security

Records concerning emergency or security information or procedures.

Records that would reveal the location of a safehouse or shelter for abused persons or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.



Closure Based Upon Internal Communications or Procedures

Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed.

EXCEPT!! If any of the above are identified or cited at a public meeting or listed on the agenda...they are **OPEN!**



Closure Based Upon Internal Communications or Procedures

Attorney work product.

Records that are privileged under the rules of evidence, unless the holder of privilege consents to the disclosure.

Records of an investigation conducted under civil litigation or administrative adjudication, if disclosure interferes with the procedure.



Closure Based Upon Internal Communications or Procedures

Correspondence between a public agency and a private individual, unless intended to give notice of an agency action, policy or determination.

Engineering estimates, evaluations and appraisals prior to property acquisition, bid specifications and bids.



Records That Are Closed

There are over 300 types of records that are required to be closed by statute and not listed in KORA. KORA will look to other statutes first.

The record custodian must be familiar with those records and what must be separated into the open and closed portions of a record.



Enforcement

KORA is a civil statute-not criminal.

A citizen, county attorney or Attorney General may bring an action in the district court where the records are located.



Penalties

Fines-up to \$500 if the action is brought by the Attorney General or local county or district attorney.

Attorney's fees may be granted if the agency's denial is determined to be without a good faith reason.



Thank You!

Additional resources:

Complete KORA outline

Frequently asked KORA
questions and answers.